Supreme Court, U.S.
FILED

No. 09-_____ 091511 JUN 80 2010

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In The

# Supreme Court of the United States

MARY CATHERINE REILLY FINTAN,

*Petitioner,*

v.

KRISTIN MORRIS; DENNIS DEVITTE; and JILL GENTILE,

*Respondents.*

**On Petition For Writ Of Certiorari To The Supreme Court Of Nevada**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

I. Did the Lower Court's Ruling that the Case Was Moot Despite an Ongoing Protection Order Violate the Article III of the Constitution?

II. Did the Lower Court Violate the Due Process Clause by Holding a Hearing Where Petitioner Was Unable to Cross-Examine Witnesses and Present Both Witnesses and Documentary Evidence?

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## PETITION FOR WRIT OF CERTIORARI

Petitioner, Mary Catherine Fintan, respectfully petitions for a writ of certiorari in this case to review the judgment of the Nevada Supreme Court.

## OPINIONS BELOW

The opinion of the Nevada Supreme Court is unpublished, but is reproduced at App. 1. The opinion of the Clark County, Nevada, Justice Court for the Las Vegas Township is also unpublished but is reproduced in the appendix.

## JURISDICTIONAL STATEMENT

The Nevada Supreme Court denied a timely filed motion for rehearing on March 10, 2010. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISIONS INVOLVED

Article III, section two, clause one of the United States Constitution provides that:

> The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; – to all Cases affecting Ambassadors, other public ministers and

> Consuls; – to all Cases of admiralty and maritime Jurisdiction; – to Controversies to which the United States shall be a Party; – to Controversies between two or more States; – between a State and Citizens of another State; – between Citizens of different States; – between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

The Fourteenth Amendment to the United States Constitution provides that no State "shall deprive any person of life, liberty, or property, without due process of law. . . ."

Nevada Revised Statute 200.594 (2009) provides:

> 1. A temporary order issued pursuant to NRS 200.591 expires within such time, not to exceed 30 days, as the court fixes. If a petition for an extended order is filed within the period of a temporary order, the temporary order remains in effect until the hearing on the extended order is held.
>
> 2. On 2 days' notice to the party who obtained the temporary order, the adverse party may appear and move its dissolution or modification, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.
>
> 3. An extended order expires within such time, not to exceed 1 year, as the court fixes. A temporary order may be converted by the

> court, upon notice to the adverse party and a hearing, into an extended order effective for no more than 1 year.

## STATEMENT OF THE CASE

While this case also involves a mootness issue under the Cases and Controversy Clause, it is fundamentally a case of unconstitutional taking of property without the minimum requirements of procedural due process. Here, the trial court conducted a faux hearing on a protection order in which the court would not allow petitioner to cross-examine adverse witnesses, nor present her own. In the end, the lower court issued a wide-sweeping order – which was repeatedly extended by another lower state court – that violated Nevada's own statutes while enjoining petitioner from using or enjoying her own property. Such actions hardly accord with protections afforded every citizen under the Due Process clause. For this reason, the Court should grant review.

This case began when respondent Morris, her two children and her boyfriend, moved next door to petitioner. Police soon began responding to complaints of trespass, property damage and suspected drug activity at their residence. The children began retaliating against complaining neighbors by pelting their homes with rocks, eggs and trash. (Summons and Order to Appear, 6/18/2008). Petitioner, alone, sustained thousands of dollars in damage to her home

and repeatedly attempted to recover her damages against respondents in court. *Id.*

In response to litigation, respondents threatened petitioner's life and finally attacked and beat her outside her home (Application for Order of Protection, Aug. 2006).

While recovering from her injuries, petitioner filed a motion seeking an order of protection from respondents. Justice court denied her motion (Order Denying Request for a Temporary Order, Aug. 24, 2006. Respondent Morris then filed a counter motion for protection, claiming she needed "a permanent protection order" to shield her from petitioner's repeated attempts to sue her for costs related to her children's property damage. (Application for Order for protection, 6/10/08.) In the motion respondents claimed:

> [Petitioner] has filed numerous Small Claims and District Court cases against me, costing me thousands of dollars in attorneys fees and loss of income for court appearances. I want a permanent protective order preventing her from filing frivolous lawsuits against me . . .

*Id.*

Though the application failed to disclose any specific instances of stalking, mention any specific threats made by petitioner, and admitted that no report had been filed with law enforcement, the lower court granted respondents' motion for a temporary order.

In July, 2008, respondents requested an extension of their protective order for one year (Applicant's Motion to Modify/Extend, 7/9/08). In the motion, respondents alleged that petitioner continued to pursue recovery of her property damages through civil litigation. Respondents stated:

> Since the TPO was served on the adverse party, she has violated the order 4 times. She approached me in court after she was served the TPO, she mailed me a package on June 22nd, she filed another small claim against me and I was served after the TPO . . . please give me some relief from this person.

*Id.*

Armed with Nevada's statutes requiring the Court to hold a hearing before curtailing a person's liberties for any extended time (NRS 200.594), petitioner asked the court to convene a hearing.

During the hearing – which lasted no more than two to four minutes – the court made factual findings without allowing petitioner to call witnesses, introduce testimony or documentary evidence, or even speak freely in her own behalf. On the other hand, the court allowed respondent Morris to raise several arguments, none of which rose to the level required for a protection order. Indeed, respondent Morris complained that the petitioner had filed an action against her for property damage, to which the court responded, "I understand, and that's been taken care in another venue . . . " App. 51.

Respondent Morris claimed that she had witnesses present to testify "to the type of person that [petitioner] is and the kind of harassment that [the respondents] have endured in our neighborhood over the last four years." App. 51. But respondents failed to call those witnesses.

The justice court asked respondent Morris a series of questions. First, the court asked if petitioner had come in contact with her, and respondent admitted, "No, except in court." App. 52. Second, the court asked if petitioner had harassed respondent to which respondent replied, "No" App. 52. When asked whether petitioner had contact with her, respondent Morris simply stated, "aside from suing me constantly." App. 51. Finally, the court questioned whether petitioner had threatened respondent in any way. Respondent initially responded "No," then later changed her answer. App. 52.

Throughout this questioning, petitioner was prohibited from presenting documentary evidence and witnesses. Petitioner was also routinely denied the opportunity to speak in her defense. For example, respondents alleged that petitioner harassed them "nonstop" for four years and that law enforcement had filed numerous reports and were investigating the harassment. App. 50. Yet when petitioner argued that she had subpoenaed law enforcement records and no reports in the previous two years had been found, the court cut off the argument, concluding, "It seems like a TPO is the answer to both your prayers." App. 53.

One week after the order was issued, petitioner asked the court to specify in the order that she be allowed to visit and personally maintain her home. (Adverse Party's Motion to Modify, 7/24/08). Petitioner's motion was denied.

Petitioner appealed, arguing that the lower court had violated her due process rights by not conducting a full and fair hearing where witnesses and documentary evidence could be heard (Appellant's Opening Brief, 9/22/08). Petitioner also argued that since the extension "deprived her of her property," she was entitled to due process protections. *Id.*

The district court affirmed the judgment of the lower court. In doing so, the court neglected to conduct an evidentiary hearing, allow petitioner to present witnesses, produce evidence or speak in her own behalf.[1] The court additionally modified the extended order summarily deciding to *increase, by two miles, the distance petitioner must stay away from respondents' home* (and thereby her own property). App. 42-43.

When petitioner argued that this would make it nearly impossible for her to perform the most perfunctory daily activities such as grocery shopping, the court consulted Mapquest® at the bench, circled a two-mile protective radius around respondents home, and ordered petitioner to follow a designated route

[1] In making its decision, the district court expressly stated that the justice court "did not take testimony under oath." App. 42.

around this area when conducting her daily routine. This route was inserted into the language of the newly-modified, more restrictive, extended, order. App. 45.

This new, more-restrictive extended order not only prohibited contact with respondents, but it prohibited petitioner from checking on, approaching, personally maintaining or inhabiting her property. It also acted to restrain her ability to practice her religion (her church was located three-tenths of a mile from her home), and it prevented her from using the Sahara West library – the largest and most crucial source of information necessary to continue her successful employment as a free-lance writer. It further restricted petitioner's ability to bank, walk her dogs, obtain her mail, pay her bills, attend movies, visit parks, dine out and utilize several major roads.

Petitioner filed a petition to the Nevada Supreme Court seeking to extinguish the protection order on state statutory and federal due process grounds. While the Supreme Court petition was pending, respondents filed yet another motion before the justice court asking the court *to further extend* the one-year order that was due to expire on July 9, 2009.

Petitioner grew concerned that this pattern would go on indefinitely in violation of NRS 200.594(3), which prohibits such orders from extending beyond one year. Respondents retained counsel to compel the court to conduct a fair hearing allowing witness testimony and the introduction of evidence. Counsel for

respondents submitted a Motion for Evidentiary Hearing and subpoenaed five witnesses to appear. (Motion for Evidentiary Hearing, June 2009; Subpocanas to Appear, June, 2009.

Again, the Court convened a hearing. Respondent's Motion for Evidentiary Hearing was ignored; the Court failed to rule on it. Once again, the court heard no witness testimony and allowed no introduction of evidence. Instead, the Court decided that since pleadings in the case were still before the Nevada Supreme Court, the extended order *would again be extended* with its expiration now, to coincide *with the unknown future date* of the Supreme Court's final ruling in the matter. (Transcript of Proceedings, Motion to Extend, Aug. 2009).

The Nevada Supreme Court affirmed without deciding the merits of petitioner's statutory and federal Constitutional claims, because the court erroneously believed that the extended temporary protection order had expired. App. 1.

Petitioner filed a timely rehearing, explaining that since the lower court had again extended the protection order beyond its initial expiration date, July 29th, 2009, the case was *not* moot. The petition for rehearing was also denied on March 10, 2010.

## ARGUMENT

The lower courts committed two egregious errors warranting the use of this Court's supervisory powers. S. Ct. Rule 10(a). First, the Nevada Supreme Court held that the petition for mandamus was moot despite the fact that there was an ongoing controversy, in the form of an extended protection order. The Nevada Supreme Court was mistaken and their holding of mootness essentially denied petitioner any judicial review. Second, the justice court and district court ordered a broad protection order that deprived petitioner of several liberty interests, including the right to enjoy her property and to travel around Las Vegas unencumbered. And those courts deprived petitioner of liberty interests without due process. At the protection order hearings, petitioner was not allowed to cross-examine witnesses, nor present her own witnesses and documentary evidence. For these reasons, the Court should grant review.

### I. Did the Lower Court's Ruling that the Case Was Moot Despite an Ongoing Protection Order Violate the Article III of the Constitution?

The Constitution permits courts to decide legal questions only in the context of actual "Cases" or "Controversies." U.S. Const. art. III, § 2. When no controversy is present a court must decline to issue an advisory opinion because the case is moot. In order for a case to not be moot an "'actual controversy must be extant at all stages of review, not merely at the

time the complaint is filed.'" *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975) (quoting *Steffel v. Thompson*, 415 U.S. 452, 459, n. 10 (1974)).

Based upon the above principle, the Nevada Supreme Court erred in finding petitioner's petition moot. Indeed, the justice court had specifically extended the temporary protection order until the Nevada Supreme Court decided the case. Since that extension constituted an "actual controversy," the lower court was wrong to dismiss the case as moot.

Moreover, the case is not now moot even though the protection order is no longer in place. This Court has repeatedly heard challenges on practices that no longer affect the attacking party, but are "capable of repetition" while "evading review." *See, e.g., Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 462 (2007); *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911). The "capable of repetition doctrine" applies only in exception situations, and generally, "only where the named plaintiff can make a reasonable showing that he will again be subjected to the alleged illegality." *Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983); *see also, DeFunis v. Odegaard*, 416 U.S. 312, 318-319 (1974) (*per curiam*).

Here, petitioner could be again subject to the same protection order at the whim of respondents or the court. While the order was labeled *temporary*, it was not. Indeed, it lasted from July, 2008 to November, 2009. If another protection order should again be requested by respondents, the justice court could

again conduct a hearing whereby petitioner is again prohibited from cross-examining witnesses, presenting her own witnesses and documentary evidence. Additionally, if the justice court were to dissolve the protection order after partial judicial review, the issue would continually evade this Court's review. For this reason, the "capable of repetition" while "evading review" doctrine applies and this case is not moot.

## II. Did the Lower Court Violate the Due Process Clause by Holding a Hearing Where Petitioner Was Unable to Cross-Examine Witnesses and Present Both Witnesses and Documentary Evidence?

The Fourteenth Amendment to the United States Constitution provides that a State shall not deprive any person of life, liberty, or property, without due process of law. Amend. XIV, § 1. Although the Due Process Clause speaks in broad terms, the requirements of due process are not "infinite." *Board of Regents v. Roth*, 408 U.S. 564, 569-70 (1972). Due Process only applies where a deprivation of liberty or property interest occurs. *Id.*

The hallmark of property, the Court has emphasized, is an individual entitlement grounded in state law, which cannot be removed except "for cause." *Memphis Light, Gas & Water Div. v. Craft,* 436 U.S. 1, 11-12 (1978); *Goss v. Lopez,* 419 U.S. 565, 573-574 (1975); *Board of Regents v. Roth,* 408 U.S. 564, 576-578 (1972). Once that characteristic is found, the

types of interests protected as "property" are varied and, as often as not, intangible, relating "to the whole domain of social and economic fact." *National Mutual Insurance Co. v. Tidewater Transfer Co.*, 337 U.S. 582, 646 (1949) (Frankfurter, J., dissenting); *Arnett v. Kennedy*, 416 U.S. 134, 207-08, and n. 2 (1974) (Marshall, J., dissenting); *Board of Regents v. Roth*, 408 U.S. at 408 U.S. 571-572, 408 (1972); *see also, Barry v. Barchi*, 443 U.S. 55 (1979) (horse trainer's license protected); *Memphis Light, Gas & Water Div. v. Craft, supra*, (utility service); *Mathews v. Eldridge*, 424 U.S. 319 (1976) (disability benefits); *Goss v. Lopez, supra*, (high school education); *Connell v. Higginbotham*, 403 U.S. 207 (1971) (government employment); *Bell v. Burson*, 402 U.S. 535 (1971) (driver's license); *Goldberg v. Kelly*, 397 U.S. 254 (1970) (welfare benefits).

There is no question that citizens possess a fundamental interest in maintaining control over their property. *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1972). There is also no question that citizens possess a fundamental liberty interest in practicing religion and unencumbered movement. U.S. Const. amend. I.

Based on these well established rights, petitioner had a liberty interest to enjoy her property, attend her church, and travel around Las Vegas. These rights were implicated when both the justice court and district court imposed the broad protection order prohibiting petitioner from accessing her rental property, and entering an area spanning more than 12.5 square miles around respondents' property.

The effect of this unusually broad and over-extended order, was predictable. It prevented petitioner from maintaining, occupying, inspecting or even attempting to sell her rental home without engaging in the services of a costly agent. In fact, the incidents described herein occurred after petitioner had diligently worked to pay off the mortgage on the property and the deed was fully reconveyed. Yet, the ultimate result of this incident was that petitioner – due to her inability to properly inspect and protect her property – was forced to sell her home well below fair value. *See* Petition for Writ of Mandamus, Affidavits.

The District Court did not just order petitioner to stay away from the respondents themselves, it summarily required her to stay *two miles away* from their actual residence. The two mile limitation substantially prevented petitioner from conducting a number of daily functions, such as walking her dogs, obtaining her mail, grocery shopping, paying bills, watching movies and dining out. It also prevented her from utilizing several major roads, including Interstate 215, (a major freeway and beltway in Las Vegas).

Imposing such a massive restriction on a citizen is, in every sense, a deprivation of property and liberty which implicates due process.

Government cannot deprive individuals of property or liberty interests without following procedural due process requirements. These requirements force

government to follow appropriate procedures when its agents decide to "deprive any person of life, liberty, or property." *Daniels v. Williams*, 474 U.S. 327, 331-332 (1986). The due process procedural rules "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests. *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972). Thus, "even though the State may have every right to deprive a person of his property or his liberty", the individual may nevertheless be able to allege a valid due process claim because the proper pre-deprivation hearing was not held or because the State procedure itself was fundamentally flawed. *Loudermill v. Cleveland Board of Education*, 470 U.S. 532 (1985); *Carey v. Piphus*, 435 U.S. 247 (1978).

Although the courts have not spelled out every procedural requirement of due process, there are nonetheless generally accepted requirements. One such requirement is an impartial hearing.

"[S]ome form of hearing is required before an individual is finally deprived of a property [or liberty] interest." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The notice of hearing and the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965). "The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair

play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment. . . ." *Fuentes*, 407 U.S. at 80-81.

Along with the hearing comes the opportunity to be heard and cross-examination of witnesses. This Court has held that when a hearing is conducted, the individual whose liberty is at issue has the opportunity to present evidence both oral and documentary evidence. *Goldberg v. Kelly*, 397 U.S. 254 (1970). "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970). *See also, ICC v. Louisville & Nashville R.R.*, 227 U.S. 88, 93-94 (1913). Indeed, where the "evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy," the individual's right to show that it is untrue depends on the rights of confrontation and cross-examination. *Greene v. McElroy*, 360 U.S. 474, 496-97 (1959).

In this case, both the justice court and district court issued extended protection orders without holding a proper hearing. First, petitioner was not allowed to cross-examine respondent Morris despite the fact that Morris's veracity was questionable. For example, respondent Morris was questioned on whether petitioner had threatened her in any way. Respondent

initially responded "no" but later changed her answer. App. 50.

Second, throughout the hearing, petitioner was prohibited from presenting documentary evidence and witnesses. Petitioner was also routinely denied the opportunity to speak in her defense. For example, respondents alleged that petitioner harassed them "nonstop" for four years, that crime reports were filed and police were investigating the harassment. App. 52. When petitioner argued that she had subpoenaed law enforcement records and no reports in the previous two years were found, the court cut off the argument, concluding that "[i]t seems like a TPO is the answer to both of your prayers." App. 54.

Third, the petitioner was prevented from calling two witnesses who appeared on her behalf. One was a neighbor who was expected to testify that petitioner never conducted herself in the neighborhood in the way respondent Morris alleged (Subpoena to Appear, 7/16/08). The other was petitioner's tenant, who appearing voluntarily, was expected to testify that the incidents alleged by respondent Morris could not have occurred on the days and times that Morris alleged. The court did not allow this testimony and summarily granted the extension.

The hearings conducted by the justice and district courts did not comport with due process. Petitioner was not allowed to cross-examine the adverse witnesses, nor was she allowed to present witnesses

or relevant documentary evidence. Such a hearing was simply a farce.

Petitioner should not have been denied the use and enjoyment of, her property, the right to practice her religion at her regular house of worship, nor the ability to travel within Las Vegas, based on the hearings described above. Because the lower courts "so far departed from the accepted and usual course of judicial proceedings," this Court's supervisory powers are warranted, and the Court should grant review. S. Ct. Rule 10(a).

## CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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IN THE SUPREME COURT OF
THE STATE OF NEVADA

| | |
|---|---|
| CATHERINE REILLY A/K/A MARY WHALEN,<br>Petitioner,<br>vs.<br>THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, THE HONORABLE KATHY A. HARDCASTLE, DISTRICT JUDGE, SITTING FOR THE HONORABLE CHARLES THOMPSON, EIGHTH JUDICIAL DISTRICT COURT JUDGE, DEPARTMENT XXIII,<br>Respondents,<br>and<br>KRISTEN MORRIS, AN INDIVIDUAL; DENNIS DEVITTE, AN INDIVIDUAL; AND JILL GENTILE, AN INDIVIDUAL,<br>Real Parties in Interest. | No. 54119 |

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS

(Filed Nov. 13, 2009)

This original petition for a writ of mandamus challenges a district court order denying petitioner's appeal of an extended temporary protection order. Having reviewed the petition, answer, and the supporting documents, we are not persuaded that writ relief is warranted. NRAP 21(b)(1); *Smith v. District Court,* 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (stating that mandamus is an extraordinary remedy and whether a petition will be considered is within our sole discretion). Specifically, as the extended temporary protection order expired one year after its issue date pursuant to NRS 200.594(3), on July 29, 2009, the petition challenging this order is moot. Accordingly, we

ORDER the petition DENIED.

/s/ Parraguirre, J.
Parraguirre

/s/ Douglas, J.
Douglas

/s/ Pickering, J.
Pickering

cc: Chief Judge, Eighth Judicial District
Hon. J. Charles Thompson, Senior Judge
Hon. Kathy A. Hardcastle, District Judge
Damian Robert Sheets
Dennis Devitte
Jill Gentile
Kristin M. Morris
Eighth District Court Clerk

CASE NO.

IN THE JUSTICE COURT
OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

– oOo –

| | | |
|---|---|---|
| KRISTIN MORRIS, Applicant, | ) | |
| vs. | ) | CASE NO. 08P00961X |
| CATHERINE REILLY, Respondent. | ) | |

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HON. KAREN BENNETT-HARON
JUSTICE OF THE PEACE
Thursday, August 6, 2009
11:10 A.M.

APPEARANCES:

For the Applicant: DENNIS DEVITTE

For the Respondent: JOHN M. TURCO, ESQ.
DAMIEN SHEETS, ESQ.

Reported by: SHAWN E. OTT, CCR NO. 577

[2] LAS VEGAS, CLARK COUNTY, NV,
THURS., AUG. 6, 2009
11:10 A.M.

– oOo –

PROCEEDINGS

THE COURT: Kristin Morris and Catherine Reilly.

Your client made a motion to dissolve; is that right?

MR. TURCO: I believe so, yes. There was an action filed by the applicant.

THE COURT: Can you all approach, please.

(Whereupon, counsel approached the bench and a discussion was had out of the hearing of the reporter.)

THE COURT: Are you Kristin Morris?

MR. DEVITTE: No, I'm Dennis Devitte. I am her husband.

THE COURT: You are Ms. Morris's husband?

MR. DEVITTE: Yes. I am also listed on the order. My name is Dennis Devitte.

THE COURT: There are so many documents on this thing. Is your wife going to be here today?

MR. DEVITTE: No, she is in the hospital right now.

[3] THE COURT: I'm sorry to hear that.

Mr. Turco, who represents Catherine Reilly, has some representations to make with regard to the

motion to dissolve the TPO, and then I will hear from you all. You objected to that.

MR. DEVITTE: Yes, absolutely. We don't want it dissolved.

MR. TURCO: Before we go any further, we need to invoke the exclusionary rule. Anyone that is going to be a potential witness, we would ask them to leave the courtroom.

THE COURT: All right.

MR. TURCO: Judge, it's our position right now that this is actually not ripe at this point because there was a writ filed with the Supreme Court by Mr. Sheets on behalf of our client, and essentially I have a copy of the order.

They were unclear as to a multitude of issues, even if the underlying TPOs were actually valid. So they have ordered the respondents, Ms. Morris and Mr. Devitte and Ms. Gentile, to answer – to file an answer within 30 days because there are some issues at hand.

THE COURT: May I see that?

And while I am doing that, let me just for [4] the record – although I didn't recognize the name Catherine Reilly, I believe there are some cases that have come before me under the name of Hinton or Vinton.

MR. TURCO: Finton.

MR. DEVITTE: Finton with an "F," Your Honor.

THE COURT: Finton, thank you. If my memory serves me correctly, there may have been about 27 or so respondents over a course of time.

MR. TURCO: We are only concerned with –

THE COURT: No, I understand that, but I do need to make a disclosure that I made a determination that the cases involving Ms. Finton who is now Ms. Reilly or Ms. Whalen be considered a vexatious litigant, and that matter was transferred, I believe, to the chief judge.

MR. TURCO: You realize that case has been completed and she was not deemed a vexatious litigant?

THE COURT: No, I didn't realize anything because once I made the referral, I was out of it, but I did want to make that discloser on the record. I think there may have been some resolution that arose where there was actually no actual [5] determination one way or the other.

MR. DEVITTE: Right. If she sued us one more time, she will be labeled a vexatious litigant. That's the agreement she agreed to.

THE COURT: I don't know because I'm not part of that, but I was the judge that did refer that issue to the chief judge, and I have expressed concern to Mr. Turco that I may not be – I don't believe that I

can be – that I would be unfair deliberately, but there may be an appearance that because I did make that referral that I'm not being fair. I did want to make that disclosure on the record.

So if any of the parties have concerns about that –

MR. DEVITTE: I don't, Your Honor.

MR. TURCO: And we don't either. We have faith in you.

THE COURT: Okay. Now, here we have this order directing an answer which means that you all, Dennis Devitte and Kristin Morris and Jill Gentile, are asked to respond to the Supreme Court within 30 days of the date of the order. It looks like it was filed on July 23rd. I'm not sure when it was signed, but in any event, you're asked to serve an answer [6] including authorities against issuance of a writ.

So it appears as though these matters may be before the Supreme Court.

MR. DEVITTE: Well, it's gone up there, and they have denied hearing it. It came back down. It's gone back up. They denied hearing it. It came back down. It's just a continuing legal battle with Ms. Finton or Reilly as to what's going on.

You know, that's all fine and dandy. They can do whatever they want in that court. All I want is a little protection. She is a dangerous person. She's going to

either kill me or my wife. Continues to violate the order.

MR. TURCO: If I may, Judge, now we are just going on his usually down-the-road rant. You know, the Court knows and Mr. Devitte, if he chooses to find out, it's not just a usual thing and it was not denied. What they're saying is we have real concerns with any underlying TPOs and we need more information or we may grant in writ which would nullify the underlying TPOs.

And as the Court is aware, once the base, the foundation of this whole issue gets knocked out, then the whole thing collapses. You can't have violations of extended TPOs that are not valid in the [7] first place.

THE COURT: Right, but there is a motion to dissolve the TPO.

MR. TURCO: That's correct, Judge. And here is our issue on that.

THE COURT: Which wouldn't be --

MR. TURCO: Here's our issue on that, Judge. The home was sold. The home has been sold. We have the realtor. It's been recorded. Ms. Reilly no longer owns that home. The trust does not own that home.

This is a completely separate individual, independent owner. It's not some kind of straw buy or anything like that. It's been purchased completely

separate of Ms. Reilly. That is completed, closed, recorded. It is closed and recorded, and she lives in another state, Judge.

THE COURT: Okay. So I guess – I mean, I understand at least the logistics with regard to the Supreme Court's involvement. What I don't quite understand is why am I getting motions from your client or your client's counsel for evidentiary hearings and motions to dissolve when, quite frankly, it looks as though the issue is being resolved at the Supreme Court as to whether or not the denial of the [8] appeal of an extended temporary protective order and modifying the extension and so forth is going to either be upheld or they're going to remand it back, and then you all will be in a position to –

MR. TURCO: And I will be happy to explain. That was filed before the Supreme Court came down with their decision, the evidentiary hearing.

The second thing is, the reason that we were asking to dissolve it is that it's our position that it has been used as a sword and not a shield, and now I realize there is a long history that we don't want to go over again, and rather than bring up a whole bunch of new and different information, what I'm asking, the reason is is it's very simple, very straightforward, she sold the home. That was the point of contention. That was the reason for all the other issues.

MR. DEVITTE: No, it wasn't.

MR. TURCO: She does not own the home, and she lives out of state. The reason we are asking to dissolve it, because I am sure the question you have is, well, why not just leave it in place, is it has been abused as a sword as opposed to a shield.

We have some particular circumstances that [9] make this a very unusual case. Mr. Devitte was formally Officer Devitte who as with the Las Vegas Metropolitan Police Department for approximately 30 years.

MR. DEVITTE: 30 years and honorably retired.

MR. TURCO: And as he will tell you again, he's the most highly decorated officer in their history or whatever he's got to say.

MR. DEVITTE: It's true.

MR. TURCO: As well as potentially the most disciplined but –

MR. DEVITTE: No, not at all, never. Not one time.

THE COURT: You know what, I am going to let you talk.

MR. DEVITTE: I'm sorry, Your Honor. He makes up these fabrications, gets them in, and then once it's heard, it's in someone's mind

THE COURT: Well, perhaps if you had a jury but –

MR. DEVITTE: Yes, Your Honor.

MR. TURCO: Ultimately, though, Judge, that's what the problem is is the reason that we move for that is because it is being used as a sword as [10] opposed to a shield.

THE COURT: Can you tell what that means?

MR. TURCO: What that means is he's actively going out and they look for her, and as a matter of fact, he effectuated an arrest on her in the latter case –

THE COURT: Out of state?

MR. TURCO: No, here in state. On the latter days of his career, so that is why we are asking it be dissolved. As I said before, she does not live there. She has no reason to be in the area and she lives of state.

THE COURT: Okay.

MR. DEVITTE: Your Honor, first of all, I never went out and looked for this woman. I want to avoid her at all costs. She continually harasses us. She's been arrested numerous times since you ordered that order under felony arrest. Also filing false police reports. She violates the order continually.

There is a detective here that will testify to it. The order was modified for her to stay away two miles from our residence, two miles from our residence.

Well, you're right. I did arrest her [11] because I was on duty, having coffee when she walked into Starbucks and started to make a scene and harass me. So she got arrested for that. You are absolutely right. That's what happened.

He doesn't want to bring all these cases of all the times she's been arrested. She was driving in front of our house one night – it's on video – saying fuck you. I was – on her scooter. I was on the sidewalk. She tried to run me over on her same scooter; then she did a letter saying she just learned how to drive. And that's on videotape.

And then she further went to say when she drove by me on the scooter that I threatened to kill her. Well, she also got charged and arrested for filing a false police report because the videotape had audio and at no time did I say that.

What she is, she's a sociopath, Your Honor. She fits a sociopath in every single degree. If you were to look that up in a dictionary, she would she fit it to the "T." Her attorneys know what's going on.

Damien Sheets, attorney, was contacted by the person who was renting her house who still rents the house from the new owner, and she told her or she told Damien Sheets that –

[12] MR. TURCO: Judge, I object –

MR. DEVITTE: – this woman is –

MR. TURCO: – hearsay.

MR. DEVITTE: I have a letter here –

MR. SHEETS: I would object. It's false and it's hearsay.

(Multiple Speakers.)

MR. DEVITTE: I am trying to avoid –

THE COURT: I know you are. You opened the door to a lot of this when you start talking about Mr. Devitte.

MR. TURCO: We didn't open the door to any hearsay, Judge.

MR. DEVITTE: I have a letter here from her.

THE COURT: When you start making comments – instead of this being really about procedure which, quite frankly, would take all of the personalities out of it and just be a question as to whether or not I have jurisdiction to deal with this, we are talking about a highly decorated and potentially highly disciplined police officer who exercised their abuse, his authority by placing her in a position to be arrested and so forth, and he's going to come back and say, well, she's done all [13] these things.

MR. TURCO: We are backing off from that.

THE COURT: But you said it.

MR. TURCO: But, see, that's why you're a judge and there is no jury. You are allowed to cleanse your mind.

THE COURT: But that's also why he would get to say – go a little far afield too and tell me things that you might not want him to tell me.

MR. TURCO: It's not that I don't want him to is I'd rather not be here for a half hour to hear the same story again.

MR. DEVITTE: The judge has never heard the story.

MR. TURCO: What I would like to say, the two-mile TPO range that he's speaking of, that's also being – that's also part of this writ that the Supreme Court wants more information on because that may not be a valid order.

THE COURT: But here is – and I will let you continue to speak, sir, but this is what my inclination is. If the Supreme Court has ordered there to be a response, and it appears as though the status quo at this point should be maintained, that there should be no dissolution or anything else until [14] you all are resolved with whatever the Supreme Court is going to decide with regard to these particular issues involving Kristin Morris, Dennis Devitte, and Jill Gentile.

MR. TURCO: Judge Martin put it back on after two weeks just to make sure that there was a quick resolution, if possible.

THE COURT: Okay.

MR. DEVITTE: Your Honor –

THE COURT: I don't know because I don't know how long it's going to take the Supreme Court to respond once they got all the information that they want. I don't know.

MR. DEVITTE: He doesn't want me to go into details of all the crimes that she has committed and the times that she's been arrested. There is a detective out there that will be more than happy to come in here and tell you what happened.

She was told no e-mails, no letters, She wrote a letter to the GLVR, Greater Las Vegas Real Estate Division, that my wife is a party to because my wife is an appraiser, and she – this woman, I have it in writing –

MR. TURCO: Object to relevance, and I am going to sit down just so you are aware.

[15] MR. DEVITTE: Has it in writing. This is how she operates. She sent this woman an affidavit to sign because she was going to charge her a deposit for her floor being damaged in her house that she was renting. So instead of doing that, she went along with the affidavit, she signed it, but now she has e-mails to my wife and to Damien Sheets, her attorney, saying I was being blackmailed.

MR. TURCO: Judge, now they are talking about renting the house.

MR. DEVITTE: Can I continue? He had his choice.

MR. SHEETS: May I just ask to see a copy of this e-mail?

MR. TURCO: I haven't even warmed up. I was just trying to spare you this lengthy – Judge, at the very least pass this to the Supreme Court – until they answer and the Supreme Court makes some kind of decision.

THE COURT: Right.

MR. TURCO: Because otherwise we are just sitting here. We can call witnesses. But today, we can if you would require that, but I don't think you really want that.

MR. DEVITTE: Your Honor, the bottom line [16] is, my wife and I are in fear of her. She's a dangerous person. She's a sociopath. She's a continual liar. She is a dangerous, dangerous person. We need a little relief in our life to go on with our life.

If she doesn't live in the neighborhood, then there should be no reason for her to be there. There should be no reason for her to be there. So let's continue on with the order as it stands.

MR. SHEETS: Your Honor, if I could approach? There are the e-mails he said that are copies of e-mails sent to me. There are no e-mails sent to me.

THE COURT: Listen –

MR. SHEETS: That goes towards his credibility, Judge.

THE COURT: What exactly is the status of the extended order of protection at this point?

MR. TURCO: It expired.

THE COURT: July 29th.

MR. TURCO: So I would argue they need to ask for a new TPO.

THE COURT: Are you aware of that? It expired July 29th.

MR. DEVITTE: But we put it on calendar [17] before it expired, and they said that it would be in effect until it was heard in front of you. We would like it to be continued, Your Honor.

THE COURT: Right. That's kind of where we are now. Then there is an order to show cause.

MR. DEVITTE: Your Honor, if I could just bring the detective in?

MR. TURCO: No, Judge. That is the whole argument that we are trying to avoid at this point.

MR. DEVITTE: The facts you are trying to avoid.

MR. SHEETS: Your Honor, since he has made ethical allegations against me, before this is over with, if you could have him present that document to

you so we have it on the record that there is nothing sent to me.

THE COURT: Okay. And then you got this order. So you all have until, what, August 23rd to respond essentially, Mr. Devitte?

MR. DEVITTE: Well, I was just handed this by counsel here so –

THE COURT: You haven't received this yet?

MR. DEVITTE: I haven't received it.

MR. SHEETS: Just for the record, it says [18] cc to them at the service address.

THE COURT: I see that. I'm just asking, did you receive it from the court?

MR. DEVITTE: Right now. I didn't receive it from the court.

MR. TURCO: You receive anything in the mail?

MR. DEVITTE: No, I didn't receive anything in the mail.

MR. SHEETS: Is it your position that the service from the Supreme Court is a lie?

MR. DEVITTE: I don't know. I didn't receive anything in the mail.

THE COURT: I don't have anything indicating that he was actually served with the order. I see the cc, but I don't know.

MR. SHEETS: That is the Supreme Court service.

THE COURT: Anyway, why don't we do this –

MR. DEVITTE: Believe me, I would have answered it.

THE COURT: You need to because what I think we are going to do is we are going to maintain the status quo. The TPO will remain in effect until [19] the Supreme Court makes a ruling on the case involving this which has several issues, and then depending upon what that court decides, it will either be – I guess it will go back to district court.

MR. DEVITTE: Your Honor, it will remain in effect until the Supreme Court decides?

THE COURT: I think that would be appropriate.

MR. DEVITTE: Thank you, Your Honor.

THE COURT: I think at this point so as to not involve myself in anything or undermine anything that the Supreme Court may do.

MR. TURCO: Get a status check in a few months then, Judge.

THE COURT: I think you all should place this on calendar if and when the Supreme Court tells you it's appropriate.

MR. DEVITTE: I'm sorry?

THE COURT: Depending upon the Supreme Court's order, it may or may not come back to me. I don't know.

MR. TURCO: Judge, the only thing we would ask, though, is that – the posters were told to be taken down, and Judge Martin ordered them –

[20] THE COURT: Did you take the posters down?

MR. DEVITTE: We took them down that day as the court ordered because it made her happy, even though two judges said that we could have it up there – and, you know, how is that interfering with her rights? That interferes with our rights.

MR. TURCO: He's not even answered the question, Judge.

MR. DEVITTE: They are down.

MR. TURCO: Now, we would ask they continue to keep those down during the interim –

MR. DEVITTE: Why is that? She doesn't live there anymore. Why is that?

THE COURT: Then why do you want then up?

MR. DEVITTE: So the neighbors know who to look out for. She is dangerous person, Your Honor.

THE COURT: Let me just say this. I understand that you are frustrated.

MR. DEVITTE: I am not frustrated. I am scared of this woman. I've been a cop for 30 years. I have never seen anyone this dangerous ever.

THE COURT: Then you know that decisions that are generated by fear are typically not always rational, and putting posters up, quite frankly, is [21] not going –

MR. DEVITTE: They weren't really posters. It was like a five by eight – not even that big. The bottom line is so we can't have the order of the posters up and she doesn't live there anymore, what would be the big deal?

MR. TURCO: There is no purpose.

THE COURT: The big deal –

MR. DEVITTE: There is a purpose. In case neighbors see her in the neighborhood.

THE COURT: Well, you know that there are other ways to handle that without doing that. I think it just continues to incite the problem.

MR. DEVITTE: If she doesn't live there, how could it incite the problem?

THE COURT: Because right now we are trying to maintain the status quo of this particular situation.

MR. DEVITTE: I will agree to that.

THE COURT: You understand?

MR. DEVITTE: Yes, I understand.

THE COURT: You've got now the Supreme Court of the state involved in this which is highly unusual, but in any event they are, and I think with all due difference everybody kinds of needs to take a [22] step back, wait until the Supreme Court issues its order, and then we will have a clearer cut way in which to proceed.

MR. SHEETS: Your Honor, if I could have him present those e-mails to you that he claimed were from myself.

MR. DEVITTE: I've never contacted any of these attorneys, either one.

MR. SHEETS: He claimed he had copies of e-mails sent to myself saying that my client –

MR. DEVITTE: By the way, she's the one that sent hate mail to either one of these guys, I don't know either one of these guys if I meet them on the street tomorrow –

(Multiple speakers.)

MR. TURCO: I feel the need for the Court if he said that –

MR. DEVITTE: This is what she does, Your Honor.

MR. SHEETS: He said he had copies of e-mails to me in hand saying that a witness was blackmailed.

MR. DEVITTE: This is what the neighbor said to me yesterday.

MR. SHEETS: I would ask, Judge, that, he [23] present the letters that he said he had in hand to me right now because I can tell you, Judge, it never happened, and he says he has them.

MR. DEVITTE: We are going to be sending then to the Bar.

THE COURT: I don't know what you guys – I don't know – I mean, that is something that I think probably should be –

MR. SHEETS: It goes towards his credibility, Judge. He has stated it on the record. I think he needs to present it.

THE COURT: I'm not having an evidentiary hearing as to your ethical violations or potential violations or any allegations of any ethical violations, and if there are such, then it should he handled by the Bar Association. You all have a lawyer/client relationship, so, quite frankly, I'm not sure –

MR. SHEETS: He's made an affirmative statement.

MR. DEVITTE: Your Honor, the bottom line is, we want to go on with our life. We don't want to be here.

MR. TURCO: We couldn't agree with you more.

[24] MR. SHEETS: I want it on the record that he's intimidating me by saying he's going to go to the Bar to try –

MR. DEVITTE: I'm telling you what's happening.

THE COURT: I'm not going to characterize that that way. People say those things.

MR. DEVITTE: I'm not intimidating you. I'm telling you the truth.

MR. SHEETS: – that I have knowledge of some blackmail that I don't know about, Judge, I think that's highly probative.

MR. DEVITTE: She said this to us last night, Your Honor.

MR. SHEETS: And that's not what he said earlier. He said he had copies of e-mails.

THE COURT: Actually implicating him in a criminal offense.

MR. DEVITTE: I'm not implicating him in a criminal offense. Let me show you, Your Honor. I will let you read it.

MR. TURCO: He's not listening Judge, I think that the Court has been very clear –

MR. DEVITTE: How do you know if I'm listening or not?

[25] MR. TURCO: Because you keep saying – she just told you that you had done something and you just said you didn't after she told you. You are not going to convince her after she just told you did it, but you are not listening so you just keep saying it over and over.

(Multiple speakers.)

THE COURT: No What I'm saying is this. Mr. Sheets apparently thinks that there are some things that you said here in the hearing that undermine or somehow threaten his ethical standing as a lawyer. He's concerned about those things.

If you have those things that you referenced, specifically some e-mails that indicate that he may have been involved in something that may or may not have been criminal or may or may not have been unethical, I don't know, then he's asking that you produce those for him. And he's essentially asking that I order you to do that.

What I'm saying is, he's made a statement. If you have the concern, you can pursue it, but I am at this

point saying this stays status quo. There are no new issues for me to deal with unless and until the Supreme Court directs me to do that.

[26] Given the fact that this is now in the hands of the Supreme Court, I think everything should remain status quo until we receive something from the Supreme Court indicating the direction that at least one of the lower courts should be taking, if any.

MR. DEVITTE: Thank you, Your Honor. You have a good day.

MR. SHEETS: If Your Honor would just ask him if he has any e-mails to myself right now.

THE COURT: Do you have anything with you that implicates Mr. Sheets in the manner that you referenced earlier? A yes or a no.

MR. DEVITTE: It will brought in front of the board and from the neighbor.

THE COURT: You don't have anything; right?

MR. DEVITTE: What I have is a letter from the neighbor explaining what she went through. She said to me, she called him and said, listen, she is blackmailing me, and she wrote a letter as to that. I don't know. My wife handed me this when she went to the hospital today.

MR. SHEETS: I'd like to see a copy of that letter. He doesn't have it with him. I went through it.

[27] THE COURT: Okay. There you have it. Apparently he says he doesn't have anything. Goodbye you all, this is it. Let the Supreme Court deal with it.

– oOo –

ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED TRANSCRIPT OF PROCEEDINGS.

/s/ Shawn E. Ott
Shawn E. Ott, CCR No. 577

CASE NO.

IN THE JUSTICE COURT
OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

-oOo-

| | | |
|---|---|---|
| THE STATE OF NEVADA,<br>Plaintiff,<br>vs.<br>MARY FRANCIS WALEN,<br>Defendant. | ) | CASE NO. 08F17908X |

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE CHARLES PAINE,
JUSTICE OF THE PEACE PRO TEM
Monday, January 26, 2009
9:45 A.M.

APPEARANCES:

For the State: SHAWN MORGAN, ESQ.
Deputy District Attorney

For the Defendant: JOHN TURCO, ESQ.

Reported by: SHAWN E. OTT, CCR NO. 577

[2] LAS VEGAS, CLARK COUNTY, NV,
MON., JAN. 26, 2009
9:45 A.M.

-oOo-

PROCEEDINGS

THE COURT: Mary Francis Walen.

MR. TURCO: Yes. If we may approach, Your Honor.

(Whereupon, counsel approached the bench and a discussion was had out of the hearing of the reporter.)

THE COURT: To all the individuals here on State of Nevada versus Mary Francis Walden, W-a-l-d-e-n, I have had a discussion here with counsel because the Court has got a defense motion to stay the proceedings on a violation of a TPO until a completion of an appeal that is pending in the Nevada Supreme Court.

This case is based upon what is pending in front of the Nevada Supreme Court which is the original TPO. If the Nevada Supreme Court reverses that case, any findings in this case that I have here are null and void. And so instead of going through a whole hearing on this case, we are going to have to wait until the Nevada Supreme Court rules on the [3] underlying TPO.

And that's what we are going to have to do as far as this one is concerned.

If Mary Francis Walden keeps things up like she seems to have kept up, please contact the district attorney's office so that case can be brought back on calender. I mean, it's not an absolute bar to what is going on, but part of the motion is is why should we

proceed just in a basic common sense way in hearing this particular case when the underlying case could be reversed and the whole thing would fall apart just like our economy has.

Yes, ma'am.

MS. MORRIS: Can I ask a question?

THE COURT: Yes, ma'am.

MS. MORRIS: What happens if she continues to violate the stalking order like she has been?

THE COURT: Then you should make reports that she is violating the original TPO and ask that this case be reinstated.

MS. MORRIS: How long will it take for the Supreme Court to make a decision?

THE COURT: You'd have to flip a coin. It's fast tracked up there, meaning it will be handled in an expedient fashion, but I can't give you [4] a date. We are going to give a date two months from now, but if she keeps doing it, then that should be known to the system that we have so the Supreme Court can say, wait a minute, or whoever is setting here can say, wait a minute, I am withdrawing the continuance, we are going to move forward on this.

MR. MORGAN: And, Judge, just so the State could briefly make a record, although we acknowledge that the motion is legally sound, but we are opposing it in order to bring finality to the victims in this case.

THE COURT: Yes.

THE REPORTER: Ma'am, what is your name?

MS. MORRIS: Kristin Morris.

THE COURT: We just need it on the record as to who spoke on this case. That's all.

MS. MORRIS: So is there going to be another court date set?

MR. TURCO: We are going to get it right now.

THE COURT: We are going to get it from Vanessa?

THE CLERK: April 2nd at 8:30.

MR. TURCO: Thank you very much.

[5] – oOo –

ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED TRANSCRIPT OF PROCEEDINGS.

/s/ Shawn E. Ott
Shawn E. Ott, CCR No. 577

**ORDER**

Kristin M. Morris
2916 Whalers Cove Circle
Las Vegas, NV 89117
Pro Se

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| **KRISTIN M. MORRIS**<br>Applicant | CASE #08PO0961X<br>Linked to Case<br>#08-A-570273A |
| vs | Dept. 23 XXIII |
| **CATHERINE REILLY, aka MARY WHALEN, CATHERINE REILLY SMITH, MARY LAABS, IRENE FINTAN**<br>Defendant | DATE:<br>December 2, 2008<br>TIME: 9:00 a.m. |

**ORDER**

(Filed Dec. 11, 2008)

This cause having come on appeal before Honorable Kathy Hardcastle, District Court Judge: Applicant Kristin M. Morris present in proper person, Catherine Reilly present and represented by her attorney, Joseph T. Nold Esq. The appeal was denied and the stalking order was modified as follows:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

The Defendant Catherine Reilly, Mary Whalen, Catherine Reilly Smith, Mary Labbs, Irene Fintan hereinafter referred to as Adverse Party is prohibited, either directly or through an agent, from contacting, intimidating, using, attempting to use, or threatening the use of physical force, or otherwise interfering in any way with the Applicant and or the following persons: KRISTIN M. MORRIS, JILL MORRIS GENTILE and DENNIS W. DEVITTE, including but not limited to, in person, by telephone, through the mail, through electronic (e-mail), facsimile (fax), or through another person (as stated in the original order for protection against stalking, aggravated stalking or harassment, dated July 29, 2008).

**ADVERSE PARTY IS FURTHER ORDERED**

To stay 2 miles away from the residence located at 2916 Whalers Cove Circle, Las Vegas, NV, except to go to or from your residence located at [Home Address Omitted], Las Vegas, NV. You are ONLY to enter and exit Pearl Harbor Drive using Count Diero Drive and South Hualapai Drive. You are prohibited from driving or walking east on Count Diero Drive from Pearl Harbor Drive towards Lake West Drive. UNDER NO CIRCUMSTANCES are you to drive or walk on Lake West Drive. You are ordered to stay 150 (one hundred fifty) feet away from the Applicants. You are prohibited from going to your rental property located at [Address Omitted], Las Vegas NV, You may hire an agent to tend to or check on your rental property located at [Address Omitted] but are not to cause the agent to contact the applicants.

DATED this 11 day of December, 2008.

/s/ Kathy A. Hardcastle
DISTRICT COURT JUDGE

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

| | | |
|---|---|---|
| CATHERINE REILLY, aka<br>MARY WALEN, aka<br>CATHERINE REILLY, aka<br>MARY LABBS, aka<br>IRENE FINTAN,<br><br>Appellant,<br><br>vs.<br><br>KRISTIN MORRIS, DENNIS<br>DEVITTE, JILL GENTILE,<br><br>Respondent. | ) | CASE NO. A570273<br>DEPT. XXIII |

BEFORE THE HONORABLE
KATHY A. HARDCASTLE,
CHIEF DISTRICT COURT JUDGE

TUESDAY, DECEMBER 2, 2008

***TRANSCRIPT OF PROCEEDINGS***
**APPEAL FROM LOWER COURT**

(Filed Feb. 10, 2009)

APPEARANCES:

For the Appellant: JOSEPH T. NOLD, ESQ.

For the Respondent: PRO PER

RECORDED BY: KRISTEN LUNKWITZ, COURT RECORDER

[2] Tuesday, December 2, 2008 at 9:48 a.m.

MR. NOLD: Good morning, Your Honor, page 23 – page 5, Department 23.

THE COURT: You scared me a little bit when you said page 23.

THE COURT: All right. Which one is it?

MR. NOLD: Reilly versus Morris.

THE COURT: All right.

MR. NOLD: A appeal from Justice Court. And once again for the record Joseph Nold, bar number, 8210 appearing with Ms. Reilly.

Your Honor, in this appeal, as was delineated in appellant's opening brief, the temporary protection order that was initially granted was done so on the request of the respondent in this case. Where she stated that: Reilly pled guilty to malicious destruction of private property on March 5th, 2007 for throwing dog poop in my swimming pool on a January date. She was told to have no contact with me and leave me alone. Since that time she has filed numerous small claims in District Court cases against me costing me thousands of dollars in attorney fees and loss of income for court appearances. I want a permanent protection order preventing her from filing frivolous lawsuits against me, and harassing me, and terrorizing me with her lies and threats.

Well, Your Honor, what wasn't mentioned was the fact that Ms. Morris sued Ms. Reilly for abuse of process. That was found in Ms. Reilly's favor. It's res

judicata. Those were not frivolous lawsuits. Furthermore, that is not a basis for a temporary protection order in-and-of-itself, to stop you from being sued.

Now, going to the transcript of the hearing that was held, it was granted temporarily. Which we assert was an error to start with, but it was granted [3] temporarily until the hearing. Now at the hearing both the appellant and respondent here had witnesses. No one was sworn in. There was no trial. They both appear – approached the bench, and they gave testimony, if you want to call it that, because they weren't sworn in.

Now, Ms. Morris for the first time stated: I have a witness here who will testify that she was in her driveway last Tuesday at her house and that she owns – that she owns and rents out, standing there with a gun outside of her pants. And my daughter drove up in the driveway and was scared to death. Now, she didn't witness that. She has a witness she's testifying to the Judge – she's telling the Judge about what a witness is going to say. My client thereafter denied that.

Now, what's most important – this is on page four of the transcript – the Court said: You don't live there anymore, referring to Ms. Reilly. She asked – then asked Ms. Morris: Do you all come in contact with each other? Ms. Morris replied: No, except in Court. She's filed seven actions against me. Once again, Your Honor, this is res judicata. A Justice Court Judge has already determined that those, causes of action, those

civil lawsuits had merit. That case was resolved in my client's favor.

Your Honor, we're asking you for a – one of two alternatives. The first one we're requesting is that the initial protection order be voided, because the application in and of itself was defective. In the alternative the extension denied my client her constitutional right of notice and opportunity to be heard.

Both appellant and respondent here stated to the Justice Court Justice that they have witnesses, they want to testify. No one was sworn in, no one testified in either event. Your Honor, we're requesting that a nunc pro tunc order be issued. Either voiding the application for the exception – from the inception based on it's [4] deficiency, or as far as the extension, voiding that from the exception – inception because once again there was no opportunity to be heard. No where in the application does it say a gun, she's standing in her yard, anything like this. She walks in and somebody says: Oh, I filed this, but you got a gun.

The net result is this, Your Honor. My client owns a piece of property here. Her federal constitutionally protected right of going to her property, checking out her tenants is now taken away from her. She cannot legally go to that property. We're requesting that this Court resolve that in my client's favor, be it taking the initial application out, or the extension, and

putting it down for a trial on the merits where they can call witnesses.

Thank you, Your Honor.

THE COURT: Okay.

MR. NOLD: Oh, I'm sorry. I apologize, Your Honor. There was a – an opposition or an answering brief filed on November 25th. I realize that Ms. Morris is in proper person. The format is incorrect, but that not withstanding, that's just a minor issue, but the Court did put forth a scheduling issue – scheduling – court scheduling on this. And the respondent had until October 30th. It was mailed to my office on the day for Thanksgiving. Respectfully requesting, that that be stricken from the record.

Thank you, Your Honor.

THE COURT: Your request is denied.

DEFENDANT MORRIS: Good morning, Your Honor.

I'm here today to ask the Court to please keep a protective order in place. I have been stalked and harassed by her in more than just the civil lawsuit era – arena. I have been stalked and harassed – she – like I said in my answer [5] here, she was arrested and charged with a felony and a gross misdemeanor for throwing dog poop in my swimming pool. And she pled guilty to that, and she was told to leave me alone, and have no contact with me.

Since that time, not only has she sued me nine times, she's also continues to harass me. She calls me. She sends me letters. She rights letters to other authorities about me, about my husband, about my daughter. She continues to harass me in every possible arena that there are – that there is.

And I – since the TPO was issued, she continues to violate it. She's violated it numerous times. We've got it on videotape. The District Attorney has arrested her, and charged her with violating it. They would not have arrested her and charged her with it if they didn't have evidence to prove that she had done that.

She continues to do what she pleases when she wants. She doesn't care about the Judge's order. She frequents the property all the time. She doesn't need to be over there everyday. I walk out my door; she's standing on the wall taking pictures of me. She rides up and down the street on her scooter and tries to run over my husband. I mean this is – I'm scared, Your Honor, I'm in fear of what she's going to do next.

And I would just please ask the Court to keep the protective order in place. In fact if it would be possible, I would like to have a distance limitation on how she – how far she can come from me. Because, she thinks just because she owns the property next door, she can come over there anytime she wants and do whatever she wants. And she doesn't live there. She has a renter there. She has no reason to be over

there three or four times a week. It's just to harass me.

THE COURT: All right.

MR. NOLD: Very briefly, Your Honor. The incidents that happened in the [6] past, those have been taken care of. They're not relevant for this proceeding, such as the dog poop. My client was charged criminally with that. It's been taken care of.

As far as the videotape, my client – noting that these parties have been going at it for a long time, Your Honor – my client installed a security system, videotape system on the house to try to resolve some of these matters. It has not been effective as far as that.

Finally, Your Honor, once again we're requesting that at the very least my client have the opportunity to put forth testimony and evidence. That's her constitutional right, because this is her property. And a right to go to her own property has now been taken away.

Thank you, Your Honor.

THE COURT: All right.

I would note for the record in this case that there was extensive discussion and argument in front of the Judge in the lower court, that while she did not take testimony under oath, there were numerous police reports and other matters that were presented to her. There was argument of counsel – of the parties. The

parties were present. And she had a lot of information to be able to make her probable cause determination.

This is not a finding that your client is guilty or not guilty of aggravated stalking. This is a finding that there is probable cause to believe that stalking has occurred, and to maintain the status quo, and extension of the protective was granted to July 2009.

It was also noted that the matter was referred to the Chief Judge of Justice Court for determination as to whether or not your client should be declared a vexatious litigant. Based upon her understanding – or the – Judge Bennett's [7] understanding that your client has been involved in roughly 81 cases.

MR. NOLD: Your Honor, for the record my client –

THE COURT: That's a little vexatious if true.

MR. NOLD: My client has retained counsel for that, in seeking Rule 11 sanctions against the attorney that put it in, because the vast majority of those are not my client's cases. Some – an attorney came in and said: Hey, you're in 88 cases; not a fact, but notwithstanding. I apologize about interrupting for the record.

THE COURT: Even nine cases is a lot for an individual.

So, based upon what I've seen in this case, there is basis to – for the granting of the extension of the temporary protective order. I will put a two mile

limit. And you are not to be within two miles of their house.

MR. NOLD: Your Honor, for the record then, a question: How is my client to go to her property that she owns?

THE COURT: She can do whatever she needs to do about hiring someone, or authorizing, or having an agent go to that property. That agent though is also to stay away from them.

MR. NOLD: Your Honor, my client lives three blocks away in her other house. Are you gonna force – is she gonna be forced to move?

THE COURT: What's her address?

MR. NOLD: 3024 Pearl Harbor Drive.

THE COURT: Okay. And how do you get there? What's the major intersection next to you?

THE PLAINTIFF: Hualapai and Count Diero.

THE COURT: Does anybody have a map?

THE CLERK: I can pull up mapquest.

[8] THE COURT: Yeah, pull it up.

THE CLERK: And it was – what was your address?

THE PLAINTIFF: 3024 Pearl Harbor Drive.

THE COURT: In Henderson.

THE CLERK: Henderson. Hualapai isn't in Henderson.

DEFENDANT DEVITTE: It's Las Vegas, 89117.

THE COURT RECORDER: What's your name, sir, just for the record?

DEFENDANT DEVITTE: Dennis Devitte. I'm on the order for protection also. Thank you.

[Pause in proceeding]

THE COURT: And your address is?

DEFENDANT MORRIS: 2916 Whalers Cove Circle.

THE COURT: It's right [indiscernible]

DEFENDANT MORRIS: It would be north, north and slightly east.

THE COURT: Whalers Cove Circle; right?

DEFENDANT MORRIS: Yes.

THE COURT: All right.

[Colloquy between the Court and the Clerk as they look at the map]

THE COURT: All right then, Ms. Reilly, you may approach your residence off of the South Hualapai and Count Diero Drive. You are not to go

past Pearl Harbor Drive. You are not to go past Pearl Harbor Drive towards Lake Mead or Lake West Drive.

So, under no circumstances are you to be on Lake West Drive. You're not to walk there. You're not to drive your car there. You're not to cause anyone else to go there, except someone can go and check on the property, you may not. If [9] you are out and about and you happen to see Ms. Morris you are not to come within 150 feet of her.

THE PLAINTIFF: I don't anyway.

THE COURT: Nor are you to speak to her.

This is as much for your protection as it is for Ms. Morris' protection. For some reason you don't neither one of you get along with each other. I'm not assigning fault at this point. I don't care whose fault it is. The purpose of this is to maintain the status quo and keep the peace. By you continuing your course of action and what charges have already been previously filed, your just simply courting additional criminal charges by continuing to go on that location and having contact. So, that's why I'm saying this is as much for your protection as it is for Ms. Morris'.

So, the appeal is denied. The protective order is amended to the extent stated. And you may want to prepare a written protective order. If you wish to have a copy of the CD, you may order a copy of it. And then we'll remand the matter back to Justice Court.

MR. NOLD: Court's indulgence for just one moment, Your Honor.

THE COURT: All right.

DEFENDANT MORRIS: Your Honor, how do I get a copy of the CD?

THE COURT: You can –

THE COURT RECORDER: We can talk after court.

MR. NOLD: Your Honor, if I may. My client was just bringing to my attention that – and I'm gonna try to articulate the best that I can. With the Court's order there is the Lake West Drive. My client if she comes from her house, where it – and the adjacent road Ts on it, to the left is Ms. Morris' house, to the right is the grocery [10] store. She wants it to be understood that she can drive to the grocery store, but she's not going anywhere near her house.

THE COURT: She's not under any circumstances to be on Lake West Drive.

THE PLAINTIFF: Then I can never leave my home.

MR. NOLD: She can't get out of the subdivision then.

THE COURT: Yeah, she can if she goes down Diero to Hualapai and she goes down Hualapai, easy.

THE CLERK: Pearl Harbor to Count Diero.

MR. NOLD: Your Honor, could we have 54b certification on this, please, because I don't know if this is an appealable issue. I know my client –

THE COURT: Probably not.

MR. NOLD: Okay. And will the Court certify it?

THE COURT: And it's not a 54b certification, so go back to Justice Court.

MR. NOLD: Okay. Thank you, Your Honor.

DEFENDANT DEVITTE: Thank you, Your Honor.

DEFENDANT MORRIS: Thank you.

THE COURT: Okay. If you want to wait and talk to the Court Recorder to get a copy of the disk, and give Ms. Reilly time to leave the floor with her attorney.

MR. NOLD: Thank you, Your Honor.

[Proceeding concluded at 10:07 am.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

/s/ Jessica Ramirez
Jessica Ramirez
Court Recorder/Transcriber

IN THE JUSTICE COURT OF
LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

| | | |
|---|---|---|
| KRISTIN MORRIS,<br>Petitioner,<br>vs.<br>CATHERINE REILLY,<br>Respondent. | ) | CASE NO. 08PO1073X |

REPORTER'S TRANSCRIPT OF HEARING
BEFORE THE HON. KAREN BENNETT-HARON
JUSTICE OF THE PEACE
Thursday, July 17, 2008
11:05 A.M.

APPEARANCES:

For the Petitioner: In Propria Persona

For the Respondent: In Propria Persona

Reported by: SHAWN E. OTT, CCR NO. 577

[2] LAS VEGAS, CLARK COUNTY, NV, THURS., JULY 17, 2008 11:05 A.M.

PROCEEDINGS

THE COURT: Catherine Reilly versus Kristin Morris. If you are here, please come all the way up to the bench.

Hr. Who are you?

MS. MORRIS: Kristin Morris.

THE COURT: Kristin Morris, okay. And Ms. Reilly has filed – you're Ms. Fintan.

MS. REILLY: Catherine Reilly.

THE COURT: Today you're Ms. Reilly; is that right?

MS. REILLY: Yes, Your Honor.

THE COURT: And what is this all about?

MS. REILLY: TPO.

THE COURT: I understand. Under what circumstances do you think you want a TPO against Ms. Morris?

MS. REILLY: I'm not asking for one against Ms. Morris. The other way around.

THE COURT: Catherine Reilly, who is that?

MS. REILLY: That case has been dropped. [3] I took that off calendar.

THE COURT: Then why are we here?

MS. MORRIS: I want an extension of my TPO, Your Honor.

THE COURT: Your TPO expired –

MS. MORRIS: It expires the 19th.

THE COURT: Let me see if I have it. I see. Okay.

THE COURT: Kristin Morris, is that you?

MS. MORRIS: Yes.

THE COURT: You'd like an extension and tell me why.

MS. MORRIS: Well, because I've been harassed by her for four years nonstop.

THE COURT: Since the time of the TPO?

MS. MORRIS: She's violated it several times.

THE COURT: Did you report it to the police?

MS. MORRIS: Yes, I did.

THE COURT: And what, if anything, happened?

MS. MORRIS: Well, an officer came out and took a report, and they're investigating it at this time. I have a copy of the report if you'd like it.

[4] THE COURT: No. If they haven't filed any charges against her, I don't want it.

MS. MORRIS: I have a witness here who will testify that she was in her driveway last Tuesday at the house that she owns that she rents out, standing there with a gun outside of her pants, and my daughter drove up in the driveway and was scared to death. She was afraid to get out of the car.

MS. REILLY: I don't even own a gun. I was not there.

THE COURT: What is going on here? You got to leave these people alone.

MS. REILLY: Your Honor, I am not bothering her. I have four years' worth of false police reports. She has attempted my life twice. She has twice made attempts on my life. I don't live there.

THE COURT: You don't live there anymore. Do you all come in contact with each other?

MS. MORRIS: No, except in court. She's filed seven civil actions against me.

THE COURT: I understand, and that's been taken care in another venue, but with regard to since she's moved, has she done anything?

[5] MS. REILLY: No, Your Honor.

MS. MORRIS: Aside from suing me constantly.

THE COURT: Well, I can't keep her from suing you.

MS. MORRIS: She's using the court as a third –

THE COURT: In harm's way?

MS. MORRIS: I gets hang-up phone calls from her. I get – whenever she goes over to the house that she owns next door, she hollers and screams obscenities. She has yelled at my fiance and my daughter.

THE COURT: Has she threatened you in any way to put you in harm's way?

MS. REILLY: No.

THE COURT: I'm not asking you.

Has she put you in harm's way, threatened you, you know, stalked you, harassed you?

MS. MORRIS: Yes.

THE COURT: In what way?

MS. MORRIS: She keeps going over to that house over there.

THE COURT: Well, she owns that house.

MS. MORRIS: But she goes over there and [6] she's always outside and she is always harassing me whenever me and my family –

THE COURT: Describe harassing.

MS. MORRIS: She yells at my dogs because my dogs bark. She yells at me. She shouts obscenities. She squirts her hose on the wall at me and my daughter.

THE COURT: And you think a TPO will keep her from doing that?

MS. MORRIS: I just want her to leave me alone, Your Honor.

THE COURT: Did the first TPO keep her from leaving you alone?

MS. MORRIS: It wasn't extended. I was in peace for 30 days, but I have witnesses here today, Your Honor, that will testify to the type of person that she is and the kind of harassment that we have endured in our neighborhood over the last four years.

THE COURT: I know, I know. I heard all about it, but right now we're just talking about you. Okay.

MS. MORRIS: I am afraid of her, especially if she has a gun, and she is brazen enough to go over in her driveway when she has a TPO and parade around in her driveway with a gun on. I am [7] afraid.

THE COURT: I will grant your extension just so that we can keep the peace. Okay.

MS. REILLY: Then, Your Honor, I would have to apply for one as well. I would have to apply for one as well.

THE COURT: Well, you go right ahead. You know how to do it. You are very familiar with the system.

MS. REILLY: There are no grounds for an extension of the TPO.

THE COURT: She says that you're continuing to bother her even after the TPO was issued.

MS. REILLY: I subpoenaed Metro records, Your Honor. There are no police reports on file. She has not filed one police report in two years against me since she initiated her TPO a month ago.

THE COURT: You don't want to be around her and she doesn't want to be around you. It seems like a TPO is the answer to both of your prayers.

MS. REILLY: Well, then that's why I should file, and I have to file, because I have a witness here today also who is my tenant who is here to say that I have not been to my home in the last [8] month. She's lying to the Court.

THE COURT: Well, she's not saying the last month. She's saying since the TPO expired you've been a problem.

MS. REILLY: No. She said I was there a week ago with a gun on my hip violating the TPO which is absolutely bogus.

MS. MORRIS: She goes to the house when they're not there, Your Honor, so how would they know?

MS. REILLY: My tenants are always there when I am there, always. It's in the lease agreement that I cannot –

THE COURT: I am granting the extension. Okay.

MS. REILLY: And I'll be filing against her.

THE COURT: Okay. Go ahead.

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ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED TRANSCRIPT OF PROCEEDINGS.

/s/ Shawn E. Ott
Shawn E. Ott, CCR No. 577

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CASE NO. 08PO0961X
DEPT. 7

IN THE JUSTICE COURT,
LAS VEGAS TOWNSHIP

COUNTY OF CLARK, STATE OF NEVADA

| | |
|---|---|
| KRISTIN MORRIS,<br>Applicant(s),<br>vs.<br>CATHERINE REILLY, aka MARY WHALEN, aka CATHERINE REILLY SMITH, aka MARY LABBS, aka IRENE FINTAN,<br>Adverse Party(s) | TEMPORARY ORDER FOR PROTECTION AGAINST STALKING, AGGRAVATED STALKING OR HARASSMENT (NRS 200.591)<br>Date Issued:<br>June 16, 2008<br>Expiration Date:<br>[ ] _____,unless otherwise ordered by the Court<br>[X] 30 Days from the date of service, unless otherwise ordered by the Court |

YOU, THE ADVERSE PARTY, ARE HEREBY NOTIFIED THAT *ANY* INTENTIONAL VIOLATION OF THIS ORDER IS A CRIMINAL VIOLATION and can result in your immediate arrest or issuance of an arrest warrant. Unless a more severe penalty is prescribed by law for the act that constitutes the violation of the Order, a violation of a

Temporary Order for Protection Against Stalking, Aggravated Stalking or Harassment is a gross misdemeanor which is punishable by imprisonment in the county jail for not more than one (1) year, or by a fine of not more than $2,000.00, or both.

**PURSUANT TO NRS 193.166**, if the act that constitutes the violation of a protection order is itself a felony, the violator shall, in addition to the term of imprisonment prescribed by statute for the crime, be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years.

**YOU ARE FURTHER NOTIFIED** that you **CAN BE ARRESTED** even if the person who obtained the Order invites or allows you to contact them. You have the *sole responsibility* to avoid or refrain from violating the terms of this Order. Only the Court can change the Order upon written application.

**This Order meets the Full Faith and Credit provisions of the Violence Against Women Act and is enforceable in all 50 states, the District of Columbia, U.S. Territories and Indian Nations. All other courts and law enforcement with jurisdiction within the United States and all Indian Nations shall give full faith and credit to this Order pursuant to 18 U.S.C. Sec. 2265.**

**Violation of the Order may subject you to federal charges and punishment pursuant to**

**18 U.S.C. Sec. 2261(a)(1) and (2) and 2262(a)(1) and (2).**

An Application for an order pursuant to NRS 200.591 having been filed by the above-named Applicant(s), and the Court having reviewed said Application, and the Court having jurisdiction over the parties and the subject matter, and it appearing sufficient representations have been made that you, the Adverse Party, have committed and/or are committing and/or remain a threat to commit the offense(s) of stalking, aggravated stalking, or harassment, and good cause appearing therefore, **YOU ARE HEREBY ORDERED** as follows:

**YOU ARE PROHIBITED**, either directly or through an agent, from contacting, intimidating, using, attempting to use, or threatening the use of physical force, or otherwise interfering in any way with the Applicant and/or the following persons: **KRISTIN MORRIS, JILL MORRIS GENTILE, and DENNIS W. DeVITTE**; including, but not limited to, in person, by telephone, through the mail, through electronic mail (e-mail), facsimile (fax), or through another person.

1. ☐ **YOU ARE ORDERED** to stay away from the following places:

   ☒ Residence(s): **Applicant's residence, located at [Home Address Omitted], LAS VEGAS, NEVADA, 89117.**

☐ Place(s) of Employment (Name & Address): **N/A**

☐ School(s) (Name & Address): **N/A**

☐ Other Locations Frequented (Name & Address):

2. **YOU ARE FURTHER ORDERED: N/A**

**UNLESS THE COURT ORDERS OTHERWISE, THIS ORDER WILL REMAIN IN EFFECT:**

☐ **UNTIL 11:59 ON THE DATE SET FORTH ON PAGE 1**

☒ **FOR 30 DAYS AFTER THIS ORDER IS SERVED. IF THIS ORDER IS NOT SERVED WITHIN 30 DAYS OF ISSUANCE, THIS ORDER WILL EXPIRE BY ITS OWN TERMS, AND A NEW APPLICATION FOR AN ORDER MUST BE FILED IF PROTECTION IS NEEDED.**

☐ **THIS ORDER REMAINS IN EFFECT UNTIL THE HEARING WHICH IS SCHEDULED FOR _____.**

If an application for an Extended Order is filed within the effective period of this Temporary Order, **this Temporary Order will remain in effect until the hearing on an Extended Order is held.**

4. **YOU ARE HEREBY NOTIFIED THAT** if you arrested for violating this order, you will not be admitted to bail sooner than 12 hours after your arrest if:

(a) The arresting officer determines that such a violation is accomplished by a direct or indirect threat of harm;

(b) You have previously violated a temporary or extended order for protection; or

(c) At the time of the violation of within 2 hours after the violation, you have:

(1) A concentration of alcohol of 0.08 or more in your blood or breath; or

(2) An amount of a prohibited substance in your blood or urine that is equal to or greater than the amount set forth in subsection 3 of NRS 484.379.

5. **IT IS FURTHER ORDERED** that the Clerk of the Court shall transmit a copy of this Order together with the application, to the Clark County Sheriff's Office and/or the Constable and/or any other appropriate law enforcement agency.

**IT IS FURTHER ORDERED** that said law enforcement agency/process server will promptly attempt to serve this Order and the application upon the Adverse Party, without charge to the Applicant,

and upon service file a return of service with the court by the end of the next business day after service is made.

## NOTICE TO LAW ENFORCEMENT

**Any law enforcement officer, with or without a warrant, may arrest and take into custody the Adverse Party, when the law enforcement officer has probable cause to believe that (a) an order has been issued pursuant to NRS 200.591 against the Adverse Party; (b) the Adverse Party has been served with a copy of the order; and (c) the Adverse Party is acting or has acted in violation of the order. This arrest may occur regardless of whether the violation occurred in the officer's presence.**

**Any law enforcement agency in this state may enforce a court order issued pursuant to NRS 200.591, without regard to the county in which the order is issued.**

**IT IS SO ORDERED** this 16 day of June, 2008

/s/ Karen Bennett-Haron
**JUSTICE OF THE PEACE**

## PROOF OF SERVICE UPON ADVERSE PARTY

I, the undersigned, personally served the Adverse Party above named with a copy of this Temporary Order Against Stalking, Aggravated Stalking or Harassment on the date set forth below.

Signature

Print Name

Date of Service

IN THE SUPREME COURT
OF THE STATE OF NEVADA

| | |
|---|---|
| CATHERINE REILLY A/K/A MARY WHALEN,<br><br>Petitioner,<br><br>vs.<br><br>THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, THE HONORABLE KATHY A. HARDCASTLE, DISTRICT JUDGE, SITTING FOR THE HONORABLE CHARLES THOMPSON, EIGHTH JUDICIAL DISTRICT COURT JUDGE, DEPARTMENT XXIII,<br><br>Respondents,<br><br>and<br><br>KRISTIN MORRIS, AN INDIVIDUAL; DENNIS DEVITTE, AN INDIVIDUAL; AND JILL GENTILE, AN INDIVIDUAL,<br><br>Real Parties in Interest. | No. 54119 |

ORDER DENYING REHEARING

(Filed Mar. 10, 2010)

Petitioner has failed to establish that the writ petition is not moot, as the contempt actions are separate proceedings and the justice court order raised in the rehearing petition was not part of the

record before the district court and cannot be considered by this court for the first time on rehearing. NRAP 40(c)(1). Petitioner must challenge the justice court order separately by appeal to the district court under NRS 200.591(4). Accordingly, we deny the rehearing petition. NRAP 40(c).

It is so ORDERED.

/s/ Parraguirre, C.J.
Parraguirre

/s/ Douglas, J.
Douglas

/s/ Pickering, J.
Pickering

cc: Chief Judge, Eighth Judicial District
Hon. J. Charles Thompson, Senior Judge
Hon. Kathy A. Hardcastle, District Judge
Damian Robert Sheets
Dennis Devitte
Jill Gentile
Kristin M. Morris
Eighth District Court Clerk